

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

THOMAS WEINSTEIN,

Plaintiffs,

vs.

MANDARICH LAW GROUP, LLP.

Defendant.

NO. 2:17-cv-01897-RSM

**PLAINTIFF'S PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF
LAW**

I. PROPOSED FINDINGS OF FACT

1. The Court adopts the facts as detailed in its Order Granting Plaintiff's Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary Judgment as findings of fact. Dkt. #35.
2. Plaintiff, Thomas Weinstein is a natural person residing in the state of Washington. Dkt. #36 at p. 2.
3. Plaintiff is a consumer defined by 15 U.S.C. § 1692a(3) and a debtor as defined by RCW 16.16.100(7). Dkt. #36 at p. 2.
4. Defendant is a debt collector as defined by 15 U.S.C. §1692a(6) and collection agency as defined by RCW 19.16.100(4). Dkt. #36 at p. 3.

- 1 5. In September of 2014, CACH, LLC, through its counsel of record, Mandarich Law
2 Group, LLP, asserted in King County Superior Court case no. 15-2-24463-9 KNT
3 that Plaintiff owed a consumer debt in the amount of \$3,028.05 to CACH, LLC. Dkt.
4 #36 at p. 3.
- 5 6. When he was served, Plaintiff immediately placed a phone call to Defendant to
6 “make this right.” Dkt. # 31-1, Ex. A at p. 5.
- 7 7. As a result of Plaintiff’s efforts, the parties quickly settled the case in October 2014,
8 and the agreement was further confirmed by a letter from Defendant. Dkt. #35. at p. 2.
- 9 8. Pursuant to the agreement, Plaintiff would make an up-front payment of \$302.81, and
10 monthly payments of \$97.33 until the alleged debt was paid on February 27, 2017. Dkt.
11 #25-2, Ex. A at p. 1.
- 12 9. Plaintiff made monthly payments of \$97.33 to Defendant pursuant to a settlement
13 agreement from October 2014 through March 2016. The payments made by Plaintiff
14 totaled \$1,957.42. Dkt. #36 at p. 3.
- 15 10. In October 2015, without informing Plaintiff, Defendant obtained a default judgment
16 in King County Superior Court in the amount of \$3,558.05 (now inflated due to
17 attorney’s fees and costs) with post-judgment interest at 12% per annum, and which
18 also conveniently failed to credit Plaintiff for any of the payments that he made for over
19 one year. Dkt. #35 at p. 3.
- 20 11. Meanwhile, Defendant continued to process payments and send Plaintiff letters
21 acknowledging the agreement that had been made and that Plaintiff was complying
22 with the agreement. *Id.*

1 12. In April 2017, Defendant started garnishing Mr. Weinstein's wages, which was the first
2 notice Plaintiff received that a default judgment had been entered against him. Dkt.
3 #35 at p. 4; Dkt. #36 at p. 3.

4 13. As an individual without legal training, Plaintiff believed that after the April
5 garnishment finished that he would be done with Defendant once and for all. Dkt. #25-
6 2 at ¶ 15.

7 14. He was wrong, as Defendant again tried to garnish his wages in October 2017. *Id.* at ¶
8 16; Dkt. # 36 at p. 3.

9 15. The default judgment obtained by Defendant in King County Superior Court case no.
10 15-2-24463-9 KNT is still in effect.

11 16. Defendant has taken no action to vacate or modify the default judgment.

12 17. Defendant has been warned and admonished multiple times, by the King County
13 Superior Court about its improper default tactics. Such warnings came during the same
14 period of time as the events of this case. Dkt. #30 at p. 9, n.7 (citing Dkt. #17-1 at ¶¶
15 12-13, Ex. D and E).

16 18. Plaintiff has suffered actual damages in the amount of \$1,957.42 due to Defendant
17 failing to honor the settlement agreement.

18 19. Plaintiff has suffered actual damages in the amount of \$1,468.94 for the amounts
19 garnished via Defendant's ill-gotten default judgment.

20 20. Plaintiff has suffered actual damages for the amounts that he must pay an attorney to
21 vacate the default judgment that Defendant has failed to vacate or modify. Such actual
22 damages are in the amount of \$_____.

1 21. Plaintiff has suffered actual damages in the form of emotional distress for Defendant's
2 first and second garnishment attempts. Such emotional distress damages are in the
3 amount of \$ _____.

4 22. Plaintiff has suffered actual damages in the form of emotional distress for Defendant's
5 failure to vacate the ill-gotten default judgment. Such emotional distress damages are
6 in the amount of \$ _____.

7 **II. PROPOSED CONCLUSIONS OF LAW**

8 1. The Court adopts its previous legal rulings as detailed in its Order Granting Plaintiff's
9 Motion for Partial Summary Judgment and Denying Defendant's Motion for Summary
10 Judgment as conclusions of law. Dkt. #35.

11 2. In November 2018, this Court ruled that the Defendant's conduct as detailed above
12 violated multiple sections of the FDCPA, including 15 U.S.C. 1692 §§ 1692e, e(2),
13 e(5), e(10), 15 U.S.C. § 1692f and (f)1. Dkt. #35.

14 3. Additionally, this Court ruled that Defendant violated RCW 19.16.250(21) by
15 obtaining the judgment and taking actions to enforce it. *Id.*

16 4. Plaintiff is entitled to actual damages in this case under the Fair Debt Collection
17 Practices Act ("FDCPA"), including emotional distress. 15 U.S.C. § 1692k;
18 *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 957 (9th Cir.
19 2011).

20 5. Emotional distress is established through Plaintiff's testimony, and the testimony of
21 Plaintiff's wife. *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020, 1040 (9th Cir.
22 2003).

6. Plaintiff's actual damages under the FDCPA include the payments made by Plaintiff to Defendant on an agreement that Defendant breached, which totals \$1,957.42.
7. Pre-judgment interest at 12% is properly assessed to the amount of \$1,957.42 from the date of last payment (March 2016) to the date of trial. RCW 4.56 et seq.
8. Based on the facts and circumstances in this case, such as the high number of violations and the fact that Defendant is perpetually violating the law by maintaining its judgment, Plaintiff is entitled to the maximum statutory damages under the FDCPA in the amount of \$1,000.00. *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1178 (9th Cir. 2006)
9. Plaintiff is entitled to actual damages under the Washington Collection Agency Act ("WCAA") and Consumer Protection Act ("CPA"). RCW 19.16.440 and RCW 19.86 et seq.
10. Such actual damages include the wages that Defendant garnished using its improper default judgment as a basis, which totals \$1,468.94. Dkt. #36
11. Pre-judgment interest at 12% is properly assessed to the amount of \$1,468.94 from the date the garnishment (July 2017) to the date of trial. RCW 4.56 et seq.
12. Based on the facts and circumstances in this case, treble damages are appropriate in pursuant to RCW 19.86.090 to deter and punish defendant from further violations. *Mason v. Mortg. Am., Inc.*, 114 Wn. 2d 842, 855 (1990). This is especially so given the fact that Defendant still maintains its improper judgment, and has been warned numerous times about its default practices. Dkt. #30 at p. 9, n.7 (citing Dkt. #17-1 at ¶¶ 12-13, Ex. D and E)

1 13. Trebling applies to the amounts taken from Plaintiff in an improper garnishment, as
2 well as the amounts necessary for Plaintiff to hire counsel to vacate the improper
3 default. RCW 4.86.090. Dkt. #35 at p.

4 14. Plaintiff is entitled to costs of suit together with reasonable attorney's fees under the
5 FDCPA. 15 U.S.C. § 1692k. Plaintiff shall file a petition for fees and costs after the
6 conclusion of trial.

7 15. Plaintiff is entitled to costs of suit, including a reasonable attorney's fee under the
8 WCAA/CPA. RCW 19.16.440; RCW 19.86.090. Plaintiff shall file a petition for fees
9 and costs after the conclusion of trial.

10
11 Dated this 9th day of January, 2019.

12 **ANDERSON SANTIAGO, PLLC**

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